UNITED STATES
v.
WILLIAM LAVON CHAPPELL ET AL.

IBLA 82-74 Decided April 13, 1983

Appeal from decision of Administrative Law Judge Robert W. Mesch holding unpatented mining claims within the Capitol Reef National Park invalid. Contest Utah 10763.

Affirmed.

1. Mining Claims: Discovery: Generally

> The discovery of a "valuable mineral deposit" has been made where minerals have been found and the evidence is of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success in developing a valuable mine.

2. Mining Claims: Discovery: Generally

> Evidence which will not justify development of a claim but may justify further exploration is not sufficient to establish that a discovery of a valuable mineral deposit has been made.

3. Mining Claims: Discovery: Generally--Mining Claims: Withdrawn Land--Withdrawals and Reservations: Effect of

> Where land is withdrawn from the operation of the mining laws subsequent to the location of a mining claim, the validity of the claim cannot be recognized unless the claim was supported by a valid discovery at the time of the withdrawal. In addition, even though there may have been a proper discovery at the time of the withdrawal or at some other time in the past,

a mining claim cannot be considered valid unless the claim is at present supported by a sufficient discovery.

4. Administrative Procedure: Burden of Proof--Mining Claims: Contests--Mining Claims: Determination of Validity

When the United States contests a mining claim it has by practice assumed only the burden of going forward with sufficient evidence to establish a prima facie case on the charges in the contest complaint; the burden then shifts to the contestee to refute, by a preponderance of the evidence, the Government's case.

5. Administrative Procedure: Burden of Proof--Mining Claims: Contests--Mining Claims: Determination of Validity

The United States has established a prima facie case of the invalidity of a mining claim when a qualified Government mining engineer testifies that he has examined the claim and found the mineral values insufficient to support the discovery of a valuable deposit.

6. Secretary of the Interior

The Secretary of the Interior is authorized, and is under a duty to consider and determine what lands are public lands of the United States, and after having made that determination the Secretary has the authority to determine the validity of mining claims on any public lands of the United States, including lands in national parks, after adequate notice and opportunity for a hearing.

APPEARANCES: William Lavon Chappell, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Appeal has been taken by William Lavon Chappell, on his own behalf and for his co-contestees, Grant Chappell, Wendell H. Chappell, and Jack R. Chappell, from the September 24, 1981, decision of Administrative Law Judge Robert W. Mesch, which declared the Happy Birthday Nos. 1 through 8 lode mining claims invalid for a lack of discovery of a valuable mineral deposit on any of the claims, both on January 20, 1969, when the lands were

withdrawn from operation of the mining law and placed in the Capitol Reef National Monument, and at the time of the hearing in contest Utah 10763, April 21, 1981.

Contest Utah 10763 was initiated by the Bureau of Land Management (BLM), April 11, 1979, at the request of the National Park Service (NPS). The complaint charged that the lands within the Happy Birthday claims are nonmineral in character, and minerals have not been demonstrated as existing within the limits of any of the claims in sufficient quantity or of sufficient quality to constitute a valid discovery under the mining laws. The contestees denied the charges and the matter came on for a hearing in Salt Lake City, Utah, April 21, 1981.

The contested claims were originally located in 1954 by the Chappells, who later sold them. The purchasers abandoned the claims, so the Chappells relocated them in January and April 1967. The claims are situated in the W 1/2 SW 1/4 sec. 28, and S 1/2 sec. 29, T. 26 S., R. 5 E., Salt Lake meridian, Sevier County, Utah. Uranium is the mineral for which the claims were located.

By Presidential Proclamation No. 3888 of January 20, 1969, Capitol Reef National Monument was enlarged to include, inter alia, all secs. 28 and 29, T. 26 S., R. 5 E. By act of December 18, 1971, 16 U.S.C. § 273 (1976), Capitol Reef National Monument was abolished, and Capitol Reef National Park was established over the same area.

At the hearing, the Government's case-in-chief was presented by Robert D. O'Brien, a mining engineer formerly employed by NPS, and by Amos Klein, a geologist presently employed by NPS, each of whom was qualified as an expert witness.

O'Brien testified that he and Derek Hambly, Superintendent of Capitol Reef National Park, met with three of the contestees October 25, 1978, and he explained the needs and requirements of the mining laws as to discovery of a valuable mineral deposit, emphasizing that they would have to show enough ore in place so that a mining operation could be pursued. The contestees were reported as having admitted they did not have a discovery that would qualify under the mining law. The contestees declined an invitation to accompany the Government mineral examiners to the claims. Thereafter, O'Brien and Hambly proceeded to the claims, accompanied by Amos Klein, Gary Radcliff, a mining engineer employed by NPS, and John Collier, a geologist employed by NPS. The claims were identified from various claim stakes and the claim notices attached to the stakes. O'Brien and Klein checked the workings on the claims, which consisted of two bulldozed trenches on the Happy Birthday No. 2 claim, some 16 feet deep and 120 feet long, approximately perpendicular to each other. No outcroppings or evidence of diamond drill holes were found on any of the claims. An old diamond drill machine was seen on the claims. An old adit was also observed on one of the claims. O'Brien used a scintillometer to check for radioactivity, but found no readings above normal background. He said the claims appeared to be on the Morrison Formation, which has been highly productive of uraniferous minerals in New Mexico and elsewhere in Utah. He cut channel samples from the sides of the adit and had them assayed by John E. Kephart Company in Grand Junction, Colordo. The assay reports

showed only 0.002 percent U[3]O[8], and 0.01 percent V[2]O[8]. Based on his examination of the claims, it is his opinion that the land embraced in the claims is nonmineral in character, and that a prudent person would not be justified in expending either time or money on the Happy Birthday claims with any expectation of making a paying mine.

Amos Klein testified in a similar fashion, verifying that he examined the claims, with O'Brien, and that based on his independent observation it was his opinion that a prudent person would not be justified in expenditure of time or money in further development of the claims with a reasonable expectation or prospect of developing a valuable mine. Klein also testified that he revisted the claims on March 26, 1981, and saw nothing different from his observations in 1978.

William Lavon Chappell testified about his operations on the claims. He stated that he had used a scintillometer and established a grid over the claims, taking readings at intervals of 20 steps. He asserted that there were streaks showing readings on the scintillometer several points higher than the normal background count. He argued that the high readings were indicative of a discovery. He conceded that a high reading might not result in a positive showing of uranium ore in drill holes, and stated that if he could get permission from NPS to drill more holes, he would abandon the claims if the drill holes showed nothing of value. He reiterated that mineralization was found at the 25-foot level on one claim, but he could not define the extent of the mineralization, and that the trenches cut by bulldozer were also unproductive of saleable ore. In his opinion, the high readings on the scintillometer equate with discovery. He admitted that the information about airborne scintillometer investigations had come to him second or thirdhand. He did not state that any ore body had been identified on the claims, nor that any ore had ever been sold from the claims.

Jack R. Chappell testified that in 1972 he had drilled seven or eight holes where the highest scintillometer reading occurred and that good readings were recorded on a probe inserted into the holes. One hole was drilled through a 1-foot layer of what was claimed to be autunite, an uranium producing mineral. He stated that some really good ore was recovered from the bottom of the adit, which was about 14 feet long, and was taken out in sacks, but over the years the ore has all disappeared. None of the material was ever assayed. The adit since has been largely filled up with debris and rubble washed in from the surrounding land by flooding and runoff. He stated the bulldozer cuts were made to see if there was good ore at the 25-foot level, as had been indicated by a drill hole. Although marketable ore was found, there was no quantity of it. He never did find the channel in which the uranium ore reposed. He admitted the high scintillometer readings could have been caused by radon gas. No uranium ore has been found within the claims, but the high readings on the scintillometer convince him that such an ore body exists within the claims and probably could be recovered by open pit mining, which would entail construction of better roads to get the necessary equipment to the claims.

[1] It is well established that the sine qua non for a valid mining claim located on public lands of the United States is discovery of a valuable

mineral deposit within the limits of the claim, as the location of a mining claim conveys to the claimant no rights against the United States until there is shown a discovery of a valuable mineral deposit within the limits of the claim. 30 U.S.C. § 23 (1976); Best v. Humboldt Placer Mining Co., 371 U.S. 334 (1963); Cole v. Ralph, 252 U.S. 286 (1920); Lawson v. United States Mining Co., 207 U.S. 1 (1907); Converse v. Udall, 399 F.2d 616 (9th Cir. 1968), cert. denied, 393 U.S. 1025 (1969); Davis v. Nelson, 329 F.2d 840 (9th Cir. 1964); United States v. Wood, 87 I.D. 628 (1980). Implementation of this standard has been left to the Executive and the courts. Converse v. Udall, supra at 619. To be a valid claim, the discovery of a valuable mineral deposit must be within the limits of the claim. United States v. Zweifel, 508 F.2d 1150 (10th Cir. 1975), cert. denied, 423 U.S. 829 (1976); United States v. Vaux, 24 IBLA 289 (1976). For a discovery in the case of lode mining claims, there must be "tangible proof of the existence of the vein * * * bearing sufficient mineralization" to meet the prudent man test. Henault Mining Co. v. Tysk, 419 F.2d 766 (9th Cir. 1969), cert. denied, 398 U.S. 950 (1970); United States v. Vaux, supra at 298.

The recordation of a notice of location, while it casts a cloud upon the title of the United States to lands covered by location, is not sufficient to establish a claim's validity absent discovery. Davis v. Nelson, supra; cf. Cameron v. United States, 252 U.S. 450 (1920). Thus, where there has been a location, but no discovery, a claimant has not established a valid mining claim.

The Supreme Court, in Chrisman v. Miller, 197 U.S. 313 (1905), approved the so-called "prudent man test" of discovery enunciated by the Department in Castle v. Womble, 19 L.D. 455, 457 (1894). The "prudent man test" requires a showing of mineralization, both in quality and quantity, which would warrant the further expenditure of money and effort by an individual of ordinary prudence in a reasonable expectation of developing a valuable mine. The Court has followed this decision consistently since that time. Accord, United States v. Coleman, 390 U.S. 599 (1968); Best v. Humboldt Placer Mining Co., supra; Cameron v. United States, supra; Cole v. Ralph, supra. The "prudent man test" has been complemented by the "marketability test" requiring a claimant to show that the mineral on his claim can be extracted, removed, and marketed at a profit. United States v. Coleman, supra; Converse v. Udall, supra.

[2] Mineralization that only warrants further prospecting or exploration in an effort to ascertain whether sufficient mineralization might be found to justify mining or development does not constitute a valuable mineral deposit. A valuable mineral deposit has not been found simply because the facts might warrant a search for such a deposit. Barton v. Morton, 498 F.2d 288 (9th Cir. 1974); United States v. Wood, supra. Similarly, it is not enough that the mineral values exposed justify further exploration to determine whether actual mining operations might be warranted. In order to have a valid mining claim, valuable minerals must be exposed in sufficient quantities and of sufficient quality to justify development of the claim through actual mining operations. United States v. Wood, supra; United States v. Marion, 37 IBLA 68 (1978).

Geological inference may only be relied upon in evaluating the extent and potential value of a particular exposed mineral deposit under the prudent

man test of discovery and may not be employed as a substitute for the actual finding of a mineral deposit within the limits of the claim. United States v. Bechthold, 25 IBLA 77 (1976). Geological inference alone cannot support a determination under the mining laws that a discovery of a valuable mineral deposit has been made. The claimant must actually expose a valuable mineral deposit physically within the limits of the claim. United States v. Wells, 30 IBLA 333 (1977). Evidence necessary to demonstrate the existence of an ore body or bodies sufficient to warrant a prudent person to develop a valuable mine may not be shown by geological inference. Similarly, inference may not be used to infer mineralization throughout an area where the evidence shows a few spots of high mineralization, but the mineralized areas are spotty and discontinuous. United States v. Edeline, 39 IBLA 236 (1979).

[3] Where land is closed to location under the mining laws subsequent to the location of claims, the claims cannot be recognized as valid unless all requirements of the mining laws, including discovery of a valuable mineral deposit, were met at the time of the withdrawal, and the claim presently, i.e., at the time of the hearing, meets the requirements of the law. United States v. Porter, 37 IBLA 313 (1978). Where the land occupied by a mining claim has been withdrawn from operation of the mining laws, the validity of the claim must be tested by the value of the mineral deposit as of the date of the withdrawal, as well as the date of the hearing. United States v. Chappell, 42 IBLA 74 (1979); United States v. Garner, 30 IBLA 42 (1977). Even though there may have been a proper discovery at the the time of the withdrawal or at some other time in the past, a mining claim cannot be considered valid unless the claim is at present supported by a sufficient discovery.

[4] When the United States contests a mining claim, it has assumed only the burden of going forward with sufficient evidence to establish a prima facie case on the charges in the contest complaint; the burden then shifts to the contestee to refute by a preponderance of the evidence, the Government's case. Hallenbeck v. Kleppe, 590 F.2d 852 (10th Cir. 1979); United States v. Springer, 491 F.2d 239 (9th Cir.), cert. denied, 419 U.S. 834 (1974); Foster v. Seaton, 271 F.2d 836 (D.C. Cir. 1959).

[5] The United States has established a prima facie case of the invalidity of a mining claim when a qualified Government mining engineer testifies that he has examined the claim and found the mineral values insufficient to support the discovery of a valuable mineral deposit. United States v. Wood, supra; United States v. Taylor, 25 IBLA 21 (1976).

It is the duty of mining claimants whose claim is being contested to keep discovery points available for inspection by Government mineral examiners. Mineral examiners have no affirmative duty to search for indications of a discovery on a mining claim, nor do they have to go beyond examining the discovery points of the claimants. The function of the Government's examiners is to examine the discovery points made available by the claimants and to verify, if possible, the claimed discovery. United States v. Bryce, 13 IBLA 340 (1973). Where a claimant fails to keep his discovery points open and safely available for sampling by the Government's examiner, or declines to accompany the examiner on the claim, he assumes the risk that the Government examiner will be unable to verify the alleged discovery of a valuable mineral deposit. United States v. Russell, 40 IBLA 309 (1979), aff'd sub nom. Russell

v. Peterson, Civ. No. 79-949 (D. Ore. June 23, 1980); United States v. Knecht, 39 IBLA 8 (1979); United States v. Bechthold, supra.

The Department of the Interior has plenary authority over administration of public lands, including mineral lands. Best v. Humboldt Placer Mining Co., supra. The Secretary of the Interior is the supervising agent of the Government to do justice to all claimants and to preserve the rights of the people of the United States. Knight v. United States Land Association, 142 U.S. 161 (1891). The Secretary of the Interior has, under a grant of authority to supervise public business on public lands, including mines, the power to initiate contests through the subordinate BLM in order to see that valid claims are recognized, invalid ones eliminated, and the rights of the public preserved. Duguid v. Best, 291 F.2d 235 (9th Cir. 1961), cert. denied, 372 U.S. 906 (1963).

[6] The Secretary of the Interior has the authority to determine the validity of the mining claims on any public lands of the United States after adequate notice and opportunity for a hearing. A mining claim contest may be initiated under the authority of the Secretary of the Interior by BLM at the behest of the NPS and prosecuted by counsel of the Department with NPS employees as witnesses. Cf. United States v. Freese, 37 IBLA 7 (1978).

Appellants suggest that the "rules of the game" have been changed to their detriment since the claims were located, especially that the claims must now have an exposure of valuable ore on each and every claim. In this supposition, the appellants err. The Department has always required the showing of a valuable mineral deposit on each claim. As the court said in Humboldt Placer Mining Co. v. Secretary of the Interior, 549 F.2d 622 (9th Cir.), cert. denied, 434 U.S. 836 (1977), discovery of gold sufficient to support mining claims must be made on the claims themselves, notwithstanding discovery of gold on nearby land which might persuade a reasonable prospector to continue to search for valuable minerals on the claims. A similar expression of the need for a discovery on each claim has been made by the courts in Chrisman v. Miller, supra; Cole v. Ralph, supra; Cameron v. United States, supra; United States v. Coleman, supra.

Appellants suggest the failure of NPS to grant them a permit to do additional exploratory drilling is a factor in their inability to show the presence of a valuable mineral deposit on any of the claims. As stated above, when the land is withdrawn from operation of the mining laws, as occurred on the land embraced in these claims in 1969, the validity of the claims was dependent wholly upon the evidence of mineral in place at that time. To permit further exploration after the land was withdrawn from mining would be to negate the withdrawal order.

Appellants contend that very large and valuable deposits of a uraniferous mineral underlie the claims, an opinion based for the most part on alleged high readings on the scintillometer. Such inferential opinion cannot be substituted for the requirement to show actually the mineral in place and its extent.

Appellants suggest the Government examiner might have taken better samples from the adit if he had cleaned out the detritus and sampled at the

bottom of the adit, instead of along the side walls. As pointed out above, the responsibility for keeping discovery points open for sampling by the Government examiner is on the claimants, and the examiner is not required to reopen buried discovery points or to make discovery for the claimants. When invited to accompany the examiners to the claims, appellants declined.

Appellants stated they had sold their original locations and when the claims were later abandoned by the purchaser, they relocated the claims. The act of abandonment suggests that the purchasers lost interest in the claims, perhaps because of their inability to find any valuable mineral deposit within the claims.

In summary, the claimants were given notice and an opportunity for a hearing. They heard the testimony of the Government examiners and were well aware that the onus was on them to overcome the Government's prima facie case of no discovery. 1/ They submitted nothing tangible to show the presence of valuable ore, but only gave allegations of high scintillometer readings. They admitted that no ore had been produced from the claims and sold, and that their drilling operations had occurred on only one claim. We find that the Administrative Law Judge accurately reviewed the evidence and testimony, and came to the correct decision when he declared the claims invalid.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

James L. Burski
Administrative Judge

C. Randall Grant, Jr.
Administrative Judge.

1/ See United States v. Chappell, supra.